

**BATTLE CREEK CITY PLANNING COMMISSION
MEETING MINUTES
Wednesday, February 24, 2010**

1. Call to Order:

Chairman Preston Hicks, called the meeting to order at 4:00 p.m.

2. Attendance:

Members Present:

Steve Barker	Preston Hicks	Chip Spranger
Susan Baldwin (Mayor)	William Morris	John Stetler
John Godfrey	Ed Scheinfeldt	

Staff Present: Christine Hilton, AICP, Planning Supervisor
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Administrative Assistant

3. Additions or Deletions to the Agenda: None

4. Approval of Minutes: Meeting Minutes of January 27, 2010.

A MOTION WAS MADE BY COMMISSIONER SCHEINFELDT, SUPPORTED BY COMMISSIONER GODFREY TO APPROVE THE PLANNING COMMISSION MEETING MINUTES FOR JANUARY 27, 2010 AS PRESENTED. VOTE ON MOTION: ALL IN FAVOR; NONE OPPOSED; MOTION CARRIED.

5. Correspondence: Handed-out information to commission members and petitioners:

- Document from Commissioner Stetler regarding Accessory Building Ordinance; to be discussed today under Old Business (A.)

6. Public Hearing:

- A. Special Use Permit (S-03-10): Petition from Mr. Steven Raymond, 153 Orchard Avenue, Battle Creek, MI, 49017 requesting a Special Use Permit for a vacant parcel located on Orchard Avenue, Parcel #1670-00-139-0, for use as a Neighborhood Park as permitted under the Planning and Zoning Code, Chapter 1290, Section 1290.01(b)(14).**

Ms. Christine Hilton, Planning Supervisor, read the staff report stating the subject property is 7,198 s.f. (.17 acre) in size with 60' frontage along Orchard Avenue; which is consistent with the typical size of parcels in the neighborhood. The zoning of the subject property as well as surrounding properties is "R-1C Single Family Residential".

The neighborhood is a fairly dense single family neighborhood with well maintained homes built in the early 1900's. The nearest City Park is Piper Park, which is .31 miles away. Other public parks in the area include Quaker Park (.32 miles from the subject parcel) and Irving Park (.60 miles from the subject parcel). Parcel #1670-00-139-0 appears to be the only vacant parcel in the general vicinity and

is owned by Benjamin Park, LLC; the resident agent and petitioner for this request is Mr. Steve Raymond, who resides at 153 Orchard Avenue in the same block as the subject property. Mr. Raymond purchased the property in 2008 for use as a neighborhood park. Previous to this purchase, the City had received numerous weed violation complaints, and neighbors report there were numerous problems with maintenance including dumping, junk, and noxious vegetation.

After the parcel acquisition, the petitioner established the LLC and started making improvements including junk and noxious vegetation removal and landscaping. He had support of volunteers in the clean-up of the property and there have been some fundraising efforts. The LLC has obtained liability insurance for the park; documentation is attached to the application.

To date, the parcel contains no permanent structures other than a retaining wall on the south property line and a 4' chain link fence that City records indicate has been there since at least 2002. There are also two small play structures geared toward younger children, seating, and a picnic table. The use of this parcel as an organized park came to the attention of the City in the fall of 2009, and the owner was contacted regarding the need for a Special Use Permit.

Ms. Hilton noted the petitioner is seeking approval of special use permit that would allow them to continue to use the parcel as a private park. Attached to the application is a master park plan for the proposed park. Please note that the park plan indicates a proposed basketball court, but the petitioner has advised staff that this is no longer something that will be considered. The petitioner intends for this to be used as a passive pocket park, geared towards families with younger children. In addition to a few small play structures, picnic tables, and benches, extensive landscaping is being proposed. Included with the petitioner's application is a grant application to the Battle Creek Community Foundation that outlines the two-year plan for improvements to the parcel.

Ms. Hilton stated the request meets the general standards listed in Chapter 1290.04, therefore planning staff recommends that the Planning Commission recommend to the City Commission approval of Special Use Permit Petition #S-03-10 that would allow a private park on Parcel # 1670-00-139-0 with the conditions outlined in the staff report.

Mr. Steven Raymond, 153 Orchard Avenue came forward to speak; stating he and his wife had been by this property many times, had seen it was for sale and purchased in 2008. Stated they hand delivered flyers to neighboring homes in an effort to help clean-up the lot (26 persons responded), said they had found a lot of junk and even a kitchen sink. They asked the neighbors to take part in the development and/or plans for the park. In March 2009, they asked the neighbors to help put up a play tower and also a garden planting; said they rose over \$900 dollars for the park. Mr. Raymond stated the primary use for this park is intended to be used by elementary children. He wanted to address some of the concerns that the Neighborhood Planning Council had regarding the private park:

- **Privacy:** They will have a fence that would be 7 ft. tall (66 ft x 77 ft) on the north side.
- **Parental Supervision:** Only children that are supervised will be allowed.
- **Open from Dawn to Dusk:** Park will be locked in the evening with no lighting.
- **Park Use:** Intended for the neighbors to enjoy their families there.

Mr. Matt Appleton, 101 Garrison Avenue, stated they live near the park and have helped, also have children that are small that go there. Said this park has brought the neighbors together and that he and his wife are in support of this park.

Mr. Eric Greene, 148 Orchard Avenue, stated he is in support and noted his family has enjoyed this park. Stated it is good for small children; of which he has two and that it is a convenient and nice place to go to. Stated it is a good opportunity for the city to allow the Raymond's to improve this vacant lot and allow it to be used as a park.

Ms. Roselynn Goff, 144 Orchard Avenue, stated she lives adjacent to the park and that her living-room is open to this park and during non-working hours it is an infringement on her property. Said she bought her home in this older historic area for her privacy and this park is not consistent with her single-family zoned area. Said she would have sought higher intensity neighborhood if she wished. Noted she has seen children there with B.B. guns, dogs unleashed, and adolescents there and wish they consider her fears of entry to her property. Stated children put fingers through the fence and vandalize plantings and feel there are other parks within the area to go to, said there was an element of exclusion with the removal of basketball courts.

Mr. Dave Smolinski, 47 Orchard Place, stated he lives 1 ½ blocks away from the park and had moved there 3 years ago, said there was a drug house next door to him which is now gone. Stated the northside is challenging and have unique problems; that this park is more than just a park and has allowed persons to come together as neighbors. Noted the activity there has not been out of the ordinary and that people are doing the right thing and will address issues as they happen. Said this is a good thing for the city as they take ownership of a vacant and abandoned lot and improve it for the better.

Ms. Holly McKee, 135 Orchard Avenue, said she lives across the street from the park and have lived there for 11 years; said this is the first time it has looked pleasant. Stated it has built a better community and neighborhood, said they have newly met their neighbors because of the park; stated it is not just houses that make a neighborhood. Noted the lot had been weed ridden and that Code Compliance had been called upon many times in the past; said now it is a dream space for the neighbors and community.

Mr. Brad Bishop, 129 Garrison Avenue, stated he lives adjacent to the park, and has a concern with having a dog and children possibly reaching through to pet him and could by chance get bitten.

Mr. David Nielson, 44 Latta Street, stated he is the Neighborhood Planning Council #4 Chairperson and he had met with Mr. Raymond and looked at the property. Noted on February 17, 2010, at their NPC meeting there were only two persons that live near the park in attendance; one was in favor and one was in opposition. Said the NPC did not feel they should take a side of being in favor or opposition as they have a difference of opinion regarding things that have occurred at the park and the NPC feels they need to address those issues between themselves. Mr. Nielson stated this type of park is a one of a kind and/or the first one within the city and could possibly be more to come. Feels the opportunity will be there to do great things, but could set precedence and problems need to be addressed. The NPC wants more communication and cooperation to have guidelines set. Asked if the city could possibly setup guidelines for there will be more of these types of parks to come.

Ms. Beth Raymond, 153 Orchard Avenue, stated that when the flyers were handed-out and there were some persons that did not want to be apart of the park. Said they are trying to keep an open communication.

Mr. Jim Haadsma, 146 S. Lincoln Blvd., stated he was the County Commissioner of this district and was taken back with this lot in its appearance as it was before it was cleaned-up, and now it has improved all the properties within the area. Said the neighbors concerns need to be addressed and think a privacy fence installed would address their concerns. He asked the Planning Commission to approve with the stipulation that a privacy fence be installed.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER STETLER, SUPPORTED BY COMMISSIONER SPRANGER TO APPROVE THE SPECIAL USE PERMIT FOR PARCEL #1670-00-139-0 LOCATED ON ORCHARD AVENUE FOR USE AS A NEIGHBORHOOD PARK AS THE REQUEST MEETS THE BASIS FOR DETERMINATION LISTED IN CH. 1290.04 AS OUTLINED IN THE STAFF REPORT AND TO INCLUDE THE CONDITIONS OUTLINED IN THE STAFF REPORT, AS SUBMITTED.

Discussion:

Commissioner Godfrey stated this is not unique, as there is a neighborhood park on Bowen Avenue that was good for the neighborhood and brought the neighbors together.

Commissioner Scheinfeldt asked if approved, would the city have additional liability. He noted that the insurance company of the L.L.C. is not an agency that is recognized by the State. Ms. Jill Steele stated the City Attorney's office recommends they do not require insurance as the city would not want to police and could create problems with enforcement.

Commissioner Morris stated that it is difficult to make everyone happy, that he is in agreement with the city attorney regarding insurance. Noted he has been involved in the development of a park from the grass roots himself and is in support of this park.

Commissioner Godfrey stated if a plastic weave were woven through the rear fence it could protect any small children from getting bitten as they would not be able to put their fingers through the fence. Said as a rule, all dogs should be leashed when in the park so they would not frighten any children that are playing. Ms. Steele stated the state statute already applies; that only the property owner would not need their dog to be leashed, but all others would be required.

Commissioner Godfrey asked if there was a limit on the number of persons allowed on this lot. Ms. Steele stated it would only become a problem if the noise etc. became too excessive.

Mayor Baldwin asked why they needed a Special Use Permit for the park if they already own the property. Ms. Susan Bedsole stated the City Ordinance language states that only certain persons can maintain a park that is not contiguous to their property; as is the circumstances in this request.

Mayor Baldwin stated that Special Use Permits have restrictions for churches etc. and does not want to put policing of those as a city function. Ms. Bedsole noted that as Ms. Steele stated; this park is a L.L.C. and the city does not address them.

Commissioner Barker stated he feels the same as the Mayor regarding the cities relationship with L.L.C. Park; where do they begin and end. He asked if the gate is locked, how would they gain

entrance. Mr. Raymond stated the city had asked the gate to be locked because of requiring a SUP and if approved they would unlock the gate from dawn to dusk. It is currently locked it as they did not want to be fined by the city.

Commissioner Barker asked if the city would have any ties or liability for this park. Ms. Steele stated the fact it is called a park via Special Use Permit does not make it a city park, but is a private park and the city would not be liable.

Ms. Christine Hilton stated the request submitted can place conditions or standards that would need to be met.

Commissioner Barker asked Ms. Steele; being a private park the city would not regulate. Ms. Steele stated that was correct, it is privately owned.

Commissioner Morris stated the city is not in the business of choosing insurance companies for property owners.

Commissioner Scheinfeldt asked if NPC #4 would like for the petitioner to attend another one of their NPC meetings. Mr. Nielson, NPC #4 Chairperson stated they would like representatives from Orchard Avenue to address the neighbors concerns and work them out together.

Commissioner Scheinfeldt asked if they recommend approval for the SUP today; when would it be presented to the City Commission for approval and/or would they have enough time to get the NPC #4 recommendations.

Commissioner Morris asked Mr. Raymond if they can work with the NPC to work-out any issues. Mr. Raymond stated they have address all those issues here today; regarding fence privacy, etc. and would be only retracing today's discussion.

Ms. Steele provided information regarding "Dog Ordinance Ch. 608.11" stating any dog on that parcel would need to be on an 8 ft. leash.

Mr. David Nielson, NPC #4 Chairperson stated as an NPC they have no concerns about the park; they just ask the neighbors to work out any issues together.

Commissioner Godfrey stated the petitioner need to know the rules that will be stated; such as no dog without a leash allowed. Ms. Christine Hilton read the recommended conditions outlined in the staff report.

**A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR, NONE OPPOSED.
MOTION APPROVED.**

- B. Zoning Reclassification (#Z-01-10): Petition from Mr. Curtis Roberts & Mr. Craig Roberts, 834 Golden Avenue, Battle Creek, MI 49014, on behalf of property owners, requesting a Zoning Reclassification of (2) properties located at 28 & 38 N. Bedford Rd from "R-1B Single Family Residential" to "C-2 General Business District".**

Ms. Christine Hilton, Planning Supervisor, read the staff report regarding the petitioner is seeking approval of a zoning reclassification to C-2 General Commercial district in order to construct a

Laundromat. With the application they have submitted a simple site plan, floor plan, and photographs of their other projects, one in Kalamazoo and the other in Battle Creek. Please note, that pending approval of the zoning reclassification, the petitioner will be required to submit a full set of site and building plans for administrative review and approval.

Stated the City of Battle Creek zoning ordinance was crafted using a pyramidal structure, where specific uses permitted in a less intensive zoning district may also permitted in a more intensive zoning district. For example, C-1 Neighborhood Commercial district has a list of permitted uses, but also provides that any use within the O-1 Office district is permitted. C-2 General Commercial permits all uses in the C-1 Neighborhood Commercial district, and also subsequently those permitted in O-1 Office district. Therefore, when considering the zoning reclassification petition, any of the permitted uses for the above noted zones will be allowed at these two locations. The request for a rezoning solely deals with the zoning and subsequently the uses that would be allowable on a property, and not the actual development proposal. Consideration should be given to the surrounding zoning and land uses, existing infrastructure, and most importantly consistency with the Comprehensive Plan.

Ms. Hilton stated the planning staff recommends that the Planning Commission recommend approval to the City Commission the Zoning Reclassification Petition Z-01-10, a zoning reclassification from "R-1B Single Family Residential" to "C-2 General Business District", based on the findings noted in the staff report and four (4) standards noted.

Mr. Curtis & Craig Roberts, 834 Golden Avenue, Battle Creek, MI, was present to speak. Mr. Curtis Roberts stated they attended the February 8, 2010 meeting of the Neighborhood Planning Council #5 to discuss their request. The NPC approved the request to rezone the properties from R-1B Single Family Residential to C-2 General Business with the condition that the petitioners inquire as to the availability of any out-lots located at the Family Fare that has been approved at the southeast quadrant of W. Michigan Avenue and S. Bedford Road. The petitioners did contact the developer, as well as property owners of other available locations in this general vicinity, and found that there were none that met their needs.

Ms. Kim Rudd, 51 N. Bedford Rd., Battle Creek, MI was present to speak. Stated she lives across the street from the properties in question for the past 30 years and feels there are already vacant commercial lots that can be used without changing the zoning of these two properties. Said commercial properties should remain to the south of Michigan Ave. and leave residential to the north.

Mr. Andy Anderberg, 75 N. Hinman, Battle Creek, MI, came forward to speak and wanted it noted for the record that he was in favor of the zoning change.

Mr. Robert Whitfield, 115 Morgan Avenue, Battle Creek, MI, NPC #5 Chairperson stated the Neighborhood Planning Council supported this petition with the stipulation that they contact Family Fare to see if the use of one of their out-lots was available. Stated the petition had done so and that the NPC #5 are in support.

Mr. David Nielson, NPC #4 Chairperson, stated they have no connection; but as a planning council they try to maintain residential neighborhoods and make sure that zoning changes are not detrimental to residential neighborhoods. They need to be watchful.

No one else spoke either for or against this petition and the public hearing was closed.

A MOTION WAS MADE BY MAYOR BALDWIN, SUPPORTED BY COMMISSIONER MORRIS TO APPROVE THE ZONING RECLASSIFICATION #Z-01-10 FROM "R-1B SINGLE FAMILY RESIDENTIAL" TO "C-2 GENERAL BUSINESS DISTRICT", BASED ON THE FINDINGS OUTLINED IN THE STAFF REPORT FOR TWO PROPERTIES LOCATED AT 28 & 38 N. BEDFORD ROAD (PARCELS # 8610-00-031-0 & #8610-00-028-0), AS SUBMITTED.

Discussion:

Commissioner Godfrey stated it is difficult for neighborhoods to divide between business and homes and it is a concern for the neighbors. He asked what happens to the parcel to the north on the corner of Willard and Bedford Road and if the petitioner had asked Family Fare regarding an out-lot and/or other commercial properties available.

Mr. Curtis Roberts stated as noted in the meeting packet, they had contacted other property owners and the cost they are asking for their property is too high. Noted they would be creating jobs and taxes for the city. Mr. Roberts stated they had spoken to the property owner on the corner of Willard and Bedford Rd. and might be able to purchase it also. Said they are trying to create a buffer and Willard Avenue would provide that buffer and would be in agreement with the Master Plan.

Commissioner Scheinfeldt stated he is concerned with what is happening in their neighborhood and will be voting in favor of this appeal, but feel they need to keep an eye out regarding zoning changes in the neighborhood.

Commissioner Barker asked Mr. Roberts if he was in negotiations regarding purchasing the remaining N.E. corner property. Mr. Roberts stated yes, they want to see if this SUP is approved and if so will proceed talking to Mr. Taylor who is the property owner regarding the sale of their property. Said it would be the only property left on corner of Bedford Rd. and Willard that is zoned residential.

Commissioner Spranger asked if it would be a disservice to not increase the zone higher than the C-2 General Business zone. Ms. Hilton stated the C-2 General Business zone is consistent with the Master Plan.

Mayor Baldwin asked why not rezone to C-1 Neighborhood Commercial instead and buffer neighbors. Ms. Hilton stated there are no other properties zoned C-1; that C-2 is in the Master Plan and that any screening would be done by ordinance as it is a site plan requirement for that zone.

**A ROLL CALL VOTE WAS TAKEN: ALL IN FAVOR, NONE OPPOSED.
MOTION APPROVED.**

7. Old Business:

A. Accessory Building Ordinance

Mr. John Stetler provided a hand-out to the Planning Commission of his concerns regarding the Accessory Building Ordinance; stating he is not in agreement with staff recommendations and is asking the Planning Commission to review and change our current ordinance regarding the size that is currently allowed.

Mayor Baldwin stated she has objections to the current ordinance as being too small in size; stated example she has four acres and a 1,000 sq. ft. accessory building is too small for her lot size. Stated they should look at each property separately as to what it can support.

Commissioner Morris stated there are different size lots and think they need to be looked at individually and not included them all in the same pot.

Commissioner Hicks referenced the information provided, and noted that Emmett Twp. makes the determination of accessory building allowed based on the lot size.

Commissioner Morris stated he is in agreement with Mr. Stetler regarding the photo of the pole building being adjacent to the residential property as not very appealing.

Ms. Christine Hilton asked that they evaluate the current ordinance for changes, but has a concern regarding the suggestion that it not exceed 1% of the square footage of the parcel.

Commissioner Stetler stated he suggest that 120 sq. ft. be the maximum size allowed and not to exceed the height of the residence. Commissioner Stetler noted the photo he provided in the handout today being a property on Shortridge off Riverside where the structure built was within the ordinance and that the residence structure faces the other direction.

Commissioner Barker commended the Planning staff on the report provided and feels the size of an accessory building is never going to be large enough. Noted there have not been a large number of appeals submitted to the Zoning Board of Appeals regarding accessory buildings and that he is in agreement with the formula noted by Mr. Barnes who is a zoning board member.

Mr. Glenn Perian stated the size of the buildings should not exceed the total square footage of the house.

Commissioner Godfrey asked if the Planning Staff could review Commissioner Stetler's proposal and bring it back to them.

Ms. Hilton recommends that an accessory building be large enough for a car garage, that the current ordinance defines accessory buildings as also being a detached garage; the size recommended by Mr. Stetler would not be large enough for a car.

Commissioner Stetler stated they can have an attached garage in addition to a small accessory building.

Mr. Mike Fatt, NPC #9 Chairperson and Zoning Board member came forward to speak and stated that NPC #9 feels there are too many oversized accessory buildings currently and that the Zoning Board endorses Commissioner Stetler's suggestion of the 1% of lot coverage being allowed. Mr. Fatt handed out a draft example of the 1% maximum allowed; and also asked to speak on behalf of Mr. Deland Davis, Zoning Board member who was present today but had to leave, noting he also is in support of the 1% of the property size and is in favor of Mr. Stetler's recommendations. (Mr. Fatt provided a document from Mr. Davis stating his opinion).

Commissioner Spranger asked if a workshop could be setup to review and discuss the Accessory Building Ordinance, as he is not in agreement with current ordinance as written.

It was decided that the Planning Department would setup a workshop to discuss Accessory Buildings, Form Based Codes and Transitional Business District.

8. New Business:

Ms. Christine Hilton stated the 2009 Annual Report was included in today's meeting packet for their records.

9. Comments by the Public: None

10. Comments by the Staff and Commission Members:

Mayor Baldwin asked what was needed to be discussed regarding the Transitional Business District. Commissioner Scheinfeldt asked regarding the status of the Transitional Business District; noted it might possibly need to be applied to other areas of the city.

Ms. Susan Bedsole stated the ordinance regarding the TBD have some issues and might require changes as cities are always in transition. Stated that as issues arise they need to be comprehensive with looking across the city and move the Master Plan forward and take all gaps into account.

Ms. Hilton noted the Planning Department need to know the topics to be discussed in order to be better prepared and allow the workshop to be a success and get things accomplished.

Commissioner Stetler noted the Zoning Board of Appeals had asked that the Planning Commission review the Accessory Building Ordinance one-year ago, and should be a priority. Stated there are four neighborhoods; Elsinore Lane, Minges Farms, Lynwood Shores, and Huntington Hills that do not allow accessory buildings and seem to still manage.

11. Adjournment:

The meeting adjourned at 6:00 P.M.

Respectfully Submitted,



Christine M. Hilton, AICP
Executive Secretary
Planning Commission